

TAB E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CYCLE-CRAFT CO., INC. d/b/a
BOSTON HARLEY-DAVIDSON/BUELL,

Plaintiff,

vs.

Case No. 04-11402-NMG

HARLEY-DAVIDSON MOTOR CO., INC.
AND BUELL DISTRIBUTION CO., LLC.,

Defendant.

Video Deposition of JON FLICKINGER

Friday, May 27th, 2005

9:32 a.m.

at

Gramann Reporting, LTD
710 N. Plankinton Ave.
Milwaukee, WI

Reported by Rose M. Coulthart, RPR

1 A -- that. I think I -- I think I technically disagree
2 with that statement because I think the first
3 sentence of the fourth paragraph refers to the prior
4 paragraph as being a -- one of the reasons we were
5 questioning these as nonretail sales. So there must
6 have been other documentation that was not provided
7 as a part of the evaluation for whether these -- we
8 would grant an exception or not.

9 And, again, only in the circumstance
10 where there's a small number of VIN's or vehicles
11 involved would there even be the opportunity for this
12 such discretion to be exercised.

13 Q Well, what other factor besides the lack of intent to
14 sell it to a broker does Mr. Heichelbech give in this
15 letter --

16 MR. BERKOWITZ: Objection.

17 BY MR. REHNQUIST:

18 Q -- as the reason for the exception?

19 MR. BERKOWITZ: Objection. You can answer.

20 THE WITNESS: The -- I think the -- I think
21 that sentence -- in that sentence this is the only
22 reason that he gives as a -- as the reason for the
23 exception.

24 BY MR. REHNQUIST:

25 Q Well, what other reason does he give for the

1 exception in the letter?

2 A I think that this is the only exception that he gives
3 in the letter.

4 Q The only reason for the exception that he gives?

5 A Correct. Yes.

6 Q Is that a permissible exercise of the DFO's
7 discretion in your opinion?

8 A Only, again, when it -- when it involves a very small
9 number of units.

10 Q So you believe -- you believe the DFO does have the
11 discretion to -- to make an exception in the event of
12 a small number of vehicles based on the lack of any
13 intent to sell to a broker?

14 A Yeah, I would. Yes. I guess I would agree with that
15 statement.

16 Q Can you turn to the letter dated September 22, 2004,
17 which in mine is the sixth letter from the bottom?

18 MR. BERKOWITZ: Can you give us the dealer
19 name?

20 MR. REHNQUIST: The dealer's name is the
21 Cape Fear dealership, Mr. John Tew?

22 THE WITNESS: 20794?

23 BY MR. REHNQUIST:

24 Q Yes. 20794.

25 A Okay.